

Internal Revenue Service

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Third Party Communication: None

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Person To Contact:

Telephone Number:

Refer Reply To:

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Date:

July 28, 2009

Taxpayer:

Employer:

Organization A:

Organization B:

Successor Employer:

Year 1:

Year 2:

City A:

Dear :

This letter responds to Taxpayer's request for a private letter ruling dated January 28, 2009. Taxpayer has asked for a ruling that, for purposes of section 451 of the Internal Revenue Code ("Code"), he did not have constructive receipt in Year 1 of a check he actually received in Year 2. Taxpayer represents the following facts.

Taxpayer is an individual who files his Federal income tax return on a calendar year basis under the cash receipts and disbursements method of accounting. Taxpayer participated in Employer's section 457(b) deferred compensation plan ("Plan"). Employer was placed into involuntary liquidation by Organization A, and Organization B was appointed as the liquidating agent to conclude Employer's affairs. Following the involuntary liquidation, Employer merged with Successor Employer, and Organization B terminated Taxpayer's employment with Employer.

Following the termination of his employment, Taxpayer submitted to Organization B's

attorney an application requesting distribution of his funds from the Plan. Organization B's insurance company mailed a disbursement check to Successor Employer, which Successor Employer received on December 31 of Year 1.

On December 31 of Year 1, an employee of Successor Employer phoned Taxpayer, advising him that the disbursement check had arrived and was available for pick up at Successor Employer's office in City A. Successor Employer's City A office was closed all day on December 31 of Year 1. On January 2 of Year 2, Taxpayer picked up the disbursement check.

Code Section 451(a) provides that the amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

Section 1.451-1(a) of the Income Tax Regulations ("Regulations") provides that gains, profits, and income are to be included in gross income for the taxable year in which they are actually or constructively received by the taxpayer unless includible for a different year in accordance with the taxpayer's method of accounting. Section 1.451-1(a) of the Regulations further provides that, under the cash receipts and disbursements method of accounting, such amount is includible in gross income when actually or constructively received.

Section 1.451-2(a) of the Regulations provides that income, although not actually reduced to a taxpayer's possession, is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Based on the information submitted, Taxpayer could not have received the disbursement check in Year 1. Accordingly, we rule that:

- (a) Taxpayer was not in constructive receipt of the disbursement check in Year 1; and
- (b) Taxpayer may report the disbursement check as income in Year 2, the year in which he actually received the payment.

Except as specifically ruled on above, no opinion is expressed as to the Federal tax consequences of the transaction described above under any other provision of the Code. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

JOHN B. RICHARDS
Senior Technician Reviewer
Executive Compensation Branch
Office of the Division Counsel/Associate Chief
Counsel (Tax Exempt and Government Entities)